Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 Housing (Scotland) Act 2014

Chamber Refs: FTS/HPC/CV/23/3648

Property at 2/1, 316 Gartcraig Road, Glasgow, G33 3PB ("the Property")

Parties:

Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL ("the Applicant")

Mr Damian Roginski, 2/1, 316 Gartcraig Road, Glasgow, G33 3PB ("the Respondent")

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application for an order for possession should be refused.

Background

1. The Applicant seeks an order for possession in terms of Section 18 and grounds 8, 8A, 11 and 12 of schedule 5 of the Housing (Scotland) Act 1988. A tenancy agreement, Notice to quit, AT6, section 11 notice and rent statement were lodged with the application.

2. A copy of the application was served on the Respondent and the parties were notified that a case management discussion ("CMD") would take place by telephone conference call on 19 March 2024 at 10am. Prior to the CMD, the Applicant lodged an updated rent statement and a request to amend the sum claimed in the related application (CV/23/3650) to £11,199.99.

3. The CMD took place on 19 March 2024. The Applicant was represented by Mr Adams, solicitor. The Respondent participated. A related application under reference CV/23/3650 was also discussed.

Summary of discussion at CMD

4. The Tribunal noted that there is a joint tenant named on the tenancy agreement. The Notice to Quit and AT6 were not served on her and the application only names Mr Roginski as Respondent. Mr Adams said that the joint tenant moved out of the property a number of years ago. As the Respondent is the only tenant still in occupation, the application for possession of the property only requires to be made against him. Mr Roginski told the Tribunal that the joint tenant moved out of the property in December 2017 and has not lived at the property since that time. He said that he was not aware of any issues with the application paperwork but would like to take advice on the matter.

5. Mr Roginski told the Tribunal that he does not dispute the sums are due. He said that he has had problems with health and addiction and that he has not taken the opportunities offered by the Applicant to assist him. However, he wants to stay in the property and be given the chance to pay the arrears. As he is about to turn 35, his Universal credit will shortly increase. He has also applied for ADP. His family home in Poland is due to be sold and this will provide a lump sum to apply to the arrears. He stated that he has had problems with back pain, depression and addiction issues. He has made some efforts to get assistance with the latter. He is keen to stay at the property, partly because he does not want to leave the area. He has close associations with a local food bank and volunteers there. The payment to the rent account of £4200 was a universal credit backdate. He was refused a DHP

6. Following a short adjournment, the Tribunal advised parties that the application would proceed to a hearing to take place at Glasgow Tribunal Centre. Mr Adams asked the Tribunal to continue the payment application to the same date, as the arrears might increase. The Tribunal issued a direction for further information and documents. The Tribunal noted the following issues to be determined at the hearing;-

(a) As the notices were not served on the joint tenant, and the application has only been made against one of the joint tenants, is the Applicant entitled to seek an order for possession of the property?

(b) Would it be reasonable for the Tribunal to grant an order for possession of the property?

7. The parties were notified that a hearing would take place at Glasgow Tribunal Centre on 30 July 2024. Prior to the hearing the Applicant lodged submissions and an updated rent statement showing a balance due of £11,293.77

8. The hearing took place on 30 July 2024. The Applicant was again represented by Mr Adams and the Tribunal heard evidence from Mr Aidan Williams. The Respondent attended and brought copies of medical referral letters relating to his mental health and addiction issues and a letter confirming he had been awarded a DHP of £16.45 per week until April 2025.

The Hearing

9. At the start of the hearing Mr Roginski confirmed that he had received the updated rent statement and accepted it as accurate. The Tribunal noted that he had brought some documents with him. Mr Adams confirmed that he had no objection to these being considered, although late. The Tribunal noted that the application included ground 8 which had been repealed in October 2022 and that only grounds 8A, 11 and 12 would be considered.

10. The Tribunal also noted that the Applicant had not lodged any further submissions in relation to the joint tenancy issue raised at the CMD. Mr Adams said that his position is unchanged. The purpose of the application is to recover possession of the property. The only tenant currently in possession is Mr Roginski. This being the case the notices only required to be served on him and the application only had to be made against him. Mr Adams stated that the application had been accepted by a Legal Member of the Tribunal. He referred to Section 18 and 19 of the 1988 Act and to the overriding objective outlined in the Tribunal Procedure Rules. He pointed out that the joint tenant moved out in 2017. He also pointed out that, if the Tribunal is of the view that the notices should have been served on the joint tenant then the Tribunal can apply section 19(1)(b) of the 1988 Act to dispense with this. In relation to this issue. Mr Roginski stated that the joint tenant could have moved back in or may still do so. The Tribunal advised the parties that the hearing would proceed but that a decision would be made on this issue after the hearing and that if the Tribunal determined that the application and/or the notices ought to have been made against both tenants named in the agreement, the application may be unsuccessful.

Mr Williams evidence

11. Mr Williams told the Tribunal that he is the residential agent for the Applicant. He said that he was not in post in 2017 but that the Applicant's records confirm that the joint tenant gave notice that she had left the property. A new sole tenancy agreement was not signed but the joint tenant's name was removed from the system. When the arrears started his predecessor attempted to contact the Respondent and pre action letters were issued. There was a period of non-engagement before the Respondent started to engage and made them aware of his issues. He was assisted with a grant application which resulted in a payment into the account of £1700. He worked with him to get his UC sorted out and a backdated payment of £4200 was received because the DWP had made an error. The Respondent was also working with the Council's homelessness team and had social work support. Then he stopped engaging and missed appointments.

12. Mr Williams said that the updated rent statement is still accurate. A payment had been due on 20 July, but the direct debit failed. This has happened on several occasions. Mr Roginski had set up two payments a month to cover the shortfall between the rent and the UC and pay something to the arrears, but the payments often fail. Otherwise, the sum of £556.97 is coming from UC. He does

not know if this includes the DHP or not. Mr Williams said that he was in contact with Mr Roginski who said that the last payment was missed because he needed to give his sister money to go to Poland following a bereavement. Mr Williams stated that the Applicant has exhausted all avenues of support and has done much more for the Respondent than is usual. He was made aware that his tenancy was at risk. He took advice after service of the notices and was advised not to move out of the property.

13. In response to questions from the Tribunal, Mr Williams said that the joint tenant had notified the Applicant that she had moved out and wanted to give up her tenancy. Usually this would have been followed up and a new tenancy agreement put in place. For some reason it didn't happen in this case and the removal of her name from the system was not enough to change the tenancy. When asked why the Applicant had allowed the arrears to reach such a high level before action was taken, Mr Williams said that he didn't know but maybe it was because the Respondent was engaging and they knew he was going through a hard time. He stated that if the Respondent had maintained the arrangement to pay the shortfall and reduce the arrears, the position would be different, but the arrears are increasing. There are no antisocial or other tenancy related issues although there were some concerns about the condition of the property at a recent inspection. The most recent arrangement was £62 per fortnight by direct debit. He said that if he is evicted then Mr Roginski will have to go down the homeless route and is likely to end up being housed in the social rented sector. He would not be considered for housing by the Applicant unless he was paying off the arrears. He denied that the Respondent was likely to be re-housed by the Applicant as the rent is unaffordable for him.

14. In response to questions from Mr Roginski Mr Williams denied that he had discussed matters behind Mr Roginski's back with his social worker instead of speaking to him direct. He said that he had spoken to Mr Roginski and had replied to messages, one of which was abusive. However, he had also spoken to the social worker as Mr Roginski had given consent for him to do so.

Mr Roginski's evidence

15. Mr Roginski told the Tribunal that the previous payments into the rent account of £350 per month had been his UC housing costs before he turned 35. He has been out of work for two and a half years. He had been an addict for a year before that and didn't apply for UC for about a year. Before that he had been an insurance advisor for ten years. He said that the monthly DHP is going straight to the Applicant. In relation to the missed direct debit payments, he said that one of them was his fault. He gets £182 per week. One third of that is going to the Applicant. He would not be able to afford food if he was not getting some from the food bank. He wants to stay in the area because of his connection to the food bank. He used to earn £40,000 a year. He is not lazy and wants to work. He has been sober now for 2 months. He has tried to get help for his addiction but keeps getting turned away and there is no substitute for amphetamines that he can be given. Some programmes will only accept you if you have been sober for 3 to 6 months.

16. Mr Roginski stated that he would like to take in a lodger or joint tenant to help with the rent and would investigate this if he is allowed to stay in the property. He has been told that the person would have to make an application. He is worried about moving from the area in case it jeopardises his recovery. In response to questions about the sale of the family home referred to at the CMD he said that it hasn't happened yet, but it should be sold soon. It is his mother's house, and he should get a bigger share of the proceeds than his sister, about £20000, as he spent money on the house. He recently tried to start up a gardening business but there was a fall out with the friend he was working with. However, he is looking for work. Unfortunately, he has a criminal record which is making it difficult. In response to a question about the abusive message sent to Mr Williams he said that it was the only time he did that, and it was because his social worker told him that he was going to be evicted. He confirmed that Mr Williams has been very helpful and that he has not always taken the opportunities he has been offered. He told the Tribunal that if he is able, he will repay the arrears. However, he thinks that is only possible if he can stay in the house, get a job and stay sober. He hopes to get an award of ADP which will help. But he has other debts and if he has to leave the house, he doesn't think he will be able to sort things out. If the Applicant agrees he wants someone else to move in. He has someone in mind. It has to be someone whose lifestyle will not put his sobriety at risk.

17. In response to questions from Mr Adams, Mr Roginski said that he is not due to get an inheritance. His mum's house is being sold. He does not know when it will be but soon. His mum will go to live with his sister. He said that the expectation that he will get a bigger share of the proceeds has been confirmed by his mum. She is old and disabled, a former alcoholic. He was asked about the medical evidence he had lodged which states that he is estranged from his family and had been convicted of an offence which had involved his sister. Mr Roginski told the Tribunal that the medical documents contained incorrect information and that any issues with his sister have been resolved and he is often at her house. He said that his other debts include credit card, overdraft and a student loan. If evicted, he thinks that he will end up in a hostel or on the street. He worries about ending up with people who will not be good for him. He worries about bankruptcy. When asked whether he would not be better off in more affordable social housing, Mr Roginski said that his benefits now almost cover his rent and that he wants to stay where he is. He doesn't think it's unrealistic.

18. At the conclusion of the hearing, Mr Adams invited the Tribunal to determine that the application is competent for the reasons previously stated. He said that the Tribunal should conclude that it is reasonable to issue an eviction order. The Applicant has done more to assist the Respondent than is the norm even for most social landlords. The arrears are over £11, 000 and it's not reasonable for the Applicant to have to sustain that level. Mr Roginski said that he had nothing further to add but wanted to apologise for the trouble he has caused and to thank Mr Williams for everything that he has done.

Findings in Fact

19. The Applicant is the owner and landlord of the property.

20. The Respondent is a tenant of the property in terms of a private residential tenancy agreement. There is a joint tenant who does not live at the property.

21. The Respondent is due to pay rent at the rate of £573.68 per month.

22. The Respondent has been in arrears of rent since February 2021.

23. Most of the rent is currently being met by the Respondent's Universal Credit payments and a discretionary housing payment.

24. There is a shortfall between the rent charge and the benefit payments.

25. The Respondent has made some additional payments to reduce the arrears but some of these payments have not been honoured by his bank due to insufficient funds. The arrears are continuing to increase.

26. The Respondent owes sum of £11,231.77 in unpaid rent.

27. The Respondent has suffered from health and addiction issues.

28. The Respondent's arrears were previously due in part to a delay in payment of universal credit however a backdated payment was received on 14 June 2023.

29. The Applicant has issued letters in compliance with the rent arrears pre action protocol and has provided the Respondent with assistance to address the arrears. This has included assistance to obtain a grant payment and to get universal credit payments in place.

30. The Applicant issued a notice to quit and AT6 to the Respondent but not to the joint tenant.

Reasons for Decision

31. The tenancy is an assured tenancy in terms of the 1988 Act. It is a joint tenancy which started on 21 May 2016. The joint tenant, the Respondent's former partner, notified the Applicant in 2017 that she had moved out of the property and wished to give up her interest in the tenancy. The Applicant's usual practice in such situations is to arrange for the remaining tenant to sign a new agreement, creating a sole tenancy. For some reason that did not happen in this case. The witness for the Applicant indicated that it was probably just an error since the joint tenant's name was removed from the system. The Applicant does not argue that the tenancy has become a sole tenancy by virtue of the joint tenant moving out and notifying the Applicant that she had done so.

32. Prior to making the application the Applicant served a Notice to Quit and AT6 notice on the Respondent. These notices appear to be valid and meet the relevant legal requirements. The application was submitted to the Tribunal and only the Respondent, the tenant in occupation of the property, is named in the application. The application was served on the Respondent and the application proceeded first to a CMD and then to a hearing. The Respondent, who has been unrepresented throughout the proceedings, opposes the granting of the order. The Applicant argues that the application only requires to be made against the Respondent because he is the only tenant in possession of the property. For the same reason, they stated that the pre application notices did not require to be served on the joint tenant. Their secondary argument is that, having regard to the overriding objective, the Tribunal can proceed to make an order in favour of the Applicant even if the process is flawed. They also seek to rely on Section 19(1)(b) of the 1988 Act.

The relevant provisions of the 1988 Act.

33. Section 12 of the 1988 Act states, "(1) A tenancy under which a house is let as a separate dwelling is for the purposes of this Act an assured tenancy if and so long as – (a) the tenant or, as the case may be, at least one of the tenants is an individual; and (b) the tenant, or at least one of the joint tenants occupies the house as his only or principal home, and (c) the tenancy is not one which by virtue of subsection (1A) or (2) below cannot be an assured tenancy."

34. 16(1) of the 1988 Act states, "After the termination of a contractual tenancy which was an assured tenancy the person who, immediately before that termination, was the tenant, so long as he retains possession of the house without being entitled to do so under a contractual tenancy, shall subject to section 12 above and sections 18 and 32 to 35 below – (a) continue to have the assured tenancy on the house, and …..references in this Part of this Act to a "statutory assured tenancy" are references to an assured tenancy which a person is continuing to have by virtue of this subsection…..". In terms of Section 16(2) "A statutory assured tenancy cannot be brought to an end by the landlord except by obtaining an order of the First-tier Tribunal in accordance with the following provisions of this Part of the Act."

35. Section 18(1) of the 1988 Act states, "The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act". Section 18(6) states, "The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless (a) the ground for possession is ground 2 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that schedule other than ground 9, ground 10, ground 15 or ground 17; and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question". Section 18(7) provides, " Subject to the preceding provisions of this section, the First Tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made

in such circumstances, any statutory assured tenancy which has arisen on that termination shall. Without any notice, end on the day on which the order takes effect.

36. Section 19(1) of the 1988 Act states, “The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless - (1) the landlord (or where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or (b) the Tribunal considers it reasonable to dispense with the requirement of such a notice”. Section 19(3) provides, “ A notice under this section is one in the prescribed form informing the tenant that- (a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and (b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below from the date of service of the notice. Subsection 6 provides, “ Where a notice under this section relating to a contractual tenancy – (a) is served during the tenancy: or (b) is served after the tenancy has been terminated but relates to events occurring during the tenancy, the notice shall have effect notwithstanding that the tenant becomes or has become a tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.”.

37. Section 55(3) of the 1988 Act states, “ Where two or more persons jointly constitute either the landlord or the tenant in relation to a tenancy, then, except where otherwise provided, any reference in this part to the landlord or to the tenant is a reference to all the persons who jointly constitute the landlord or the tenant, as the case may require.”.

The Notice to Quit

38. Prior to making an application for recovery of possession, a landlord must serve a notice to quit on the tenant to terminate the tenancy contract and prevent tacit relocation from operating.

39. The Notice to quit lodged with the application is addressed to the Respondent only. It was served on the Respondent by Sheriff Officer on 18 April 2024 at the property. It is accepted by the Applicant that a notice to quit was not served on the joint tenant at either the property or her current address.

40. There is no prescribed format for a notice to quit. However, in terms of section 112 of the Rent (Scotland) Act 1984, for the notice to be valid it must be “.in writing and contains such information as may be prescribed and is given not less than four weeks before the date upon which it is to take effect.” In relation to the relevant date, the notice must specify a date which is an ish or end date of the tenancy since a landlord cannot require a tenant to vacate the property prior to the ish.

41. The tenancy agreement lodged with the application specifies an initial term of 21 May 2016 to 28 November 2016 with a provision that “if the agreement is not brought to an end by either party on the end date it will continue thereafter on a monthly basis until ended by either party on giving two months notice to

the other party." The notice to quit which was served on the Respondent appears to comply with section 112 and calls upon the Respondent to vacate the property on 28 June 2023, an ish date. The Tribunal is satisfied that the notice issued to the Respondent is valid.

42. Adrian Stalker at page 61 of his book Evictions in Scotland (2nd edition) states, "Notice should be served on all the other parties to the lease, including all joint tenants."

43. The Tribunal considered the arguments put forward by the Applicant:-

(a) **The Tribunal should dispense with service of the notices on the joint tenant in terms of Section 19(1)(b**). The relevant sections of section 19 are set out in paragraph 36. However, this provision only applies to the AT6 notice, being the notice required in terms of Sections 19(1)(a) and 19(3), and not to the notice to quit.

(b) **The Notice to quit only required to be served on the Respondent because the joint tenant is not in possession of the property.** This argument is also misconceived. The purpose of the Notice to quit is to terminate the tenancy contract and prevent tacit relocation from operating. In terms of Section 55(3) the "tenant" of the property is all the persons who jointly constitute the tenant. The joint tenant did not cease to be a tenant of the property simply because she moved out. In terms of section 12 of the 1988 Act, the tenancy is still an assured tenancy because the Respondent, the joint tenant, continued to occupy the property as his only or principal home.

44. Although the Applicant did not specifically mention section 18(6) of the 1988 Act, the Tribunal considered whether it might apply. In terms of this section, the Tribunal can grant an order for possession where the tenancy contract has not been terminated, in certain circumstances. The provision only applies to certain grounds. It does not apply to 8A because this was a temporary ground introduced under the Cost of Living Act 2022 and this legislation did not amend section 18(6) to include ground 8A. It does apply to grounds 11 and 12. However, the section can only be used where "the terms of the tenancy make provision for it to be brought to an end on the ground in question." (Section 18(6)(b)). This section was considered in the case of Royal Bank of Scotland v Boyle (1999 Hous LR 43). A landlord of a property let on a short assured tenancy issued a notice to quit and AT6. The Notice to quit was invalid and the landlord sought to rely on section 18(6) to obtain an order for possession. On appeal, the Sheriff Principal determined that, for this section to apply, "the essential ingredients of the grounds for recovery of possession in Schedule 5 to the 1988 Act must be referred to in the tenancy agreement and while this could be done by an exact citation of the grounds, and maybe also by providing a summary containing the essential ingredients of the grounds, incorporation by reference would not necessarily be appropriate". In the Respondent's agreement, clause 18.5 states that the tenancy can be brought to an end " By the landlord giving the tenant the required notice in the prescribed format in terms of Section 19 of the Housing (Scotland) Act 1988 of their intention to commence proceedings and then subsequently obtaining an order for recovery

of possession from the Sheriff Court on one or more of the grounds set out in the Housing (Scotland) Act 1988." The Tribunal is satisfied that agreement does not contain the "essential ingredients" of the grounds relied upon by the Applicant. Section 18(6) does not apply, and the Applicant must therefore serve a valid notice to quit before seeking an order for possession.

AT6 notice

45. Having noted that the joint tenant has not lived in the property for several years, the Tribunal is satisfied that it would be reasonable to dispense with service of the AT6 notice on the joint tenant in terms of Section 19(1)(b).

The application.

46. Rule 65 of the Tribunal Procedure Rules states that a landlord who makes an application " must state…." (iii) the name and address of the tenant..." In terms of the tenancy agreement and section 55 of the 1988 Act, this means both the Respondent and the joint tenant. The Applicant pointed out that the application had been sifted and accepted by a Legal Member of the Tribunal. However, this is not a persuasive argument. Unless rejected in terms of Rule 8, an application is not determined at the sift or application stage. All aspects of the application can still be considered and determined by the Tribunal dealing with the case.

47. The Applicant also referred to the overriding objective. Rule 3 requires the Tribunal to have regard to this when exercising any power under the Rules, interpreting any rule and managing the proceedings. The overriding objective requires the Tribunal to deal with the proceedings justly. However, it does not allow the Tribunal to disregard a fundamental flaw in an application which renders the proceedings incompetent.

Competency of the proceedings.

48. The Tribunal is satisfied that the failure by the Applicant to serve an AT6 on the joint tenant does not invalidate the proceedings as it would be reasonable to dispense with this in terms of section 19(1)(b). However, in the absence of a valid notice to quit which has been served on the joint tenant, the Tribunal is satisfied that an order for possession cannot be granted by the Tribunal in this case.

49. The Tribunal is also of the view that, even if the notice had been served on the joint tenant, the application should have been made against both the Respondent and the joint tenant. Having regard to the overriding objective and to the fact that only the Respondent is currently in possession, the Tribunal might have been persuaded to grant the order as sought. Alternatively, the Applicant could have asked to amend the application to add the joint tenant after the start of the proceedings. However, both options could only have been entertained if a valid notice to quit had been served on both tenants before the application was made.

50. The Tribunal is satisfied that an order for possession of the property cannot be granted.

The grounds of possession and reasonableness

51. Although the application is refused for the reasons already stated, the Tribunal heard evidence from the parties and is satisfied that grounds 8A, 11 and 12 are all established.

52. The Tribunal is also persuaded that, if the application had been competent, that it would have been reasonable to grant the order. This decision is not unanimous and is the conclusion of the Legal Member only, exercising her casting vote in terms of Rule 26(1) of the Tribunal Procedure Rules. The Tribunal had regard to the following factors which support the reasonableness of the decision:

(a) The arrears are in excess of £11,000.

(b) The Respondent has been in arrears of rent since February 2021.

(c) The Applicant has gone to great lengths to assist the Respondent to address the arrears and given him time to get his finances in order. Their efforts go far beyond the requirements of the pre action protocol, although they have also fully complied with this.

(d) At one point the arrears were partly caused by a failure or delay in the payment of universal credit. A backdated payment of £4000 was received due to DWP error. However, this only addressed a portion of the arrears and currently the arrears are not due to any issues with benefit payments.

(e) The arrears are continuing to increase. Currently there is a shortfall of £16.71 per month. However, this will increase if the short term DHP is withdrawn and when the rent charge increases in August 2024.

(f) The property appears to be unaffordable for the Respondent. His efforts to make up the shortfall and pay toward the arrears have been unsuccessful and the sums required to do so leave him with insufficient funds to pay for food. He also has a number of other debts.

(g) The Respondent's plans to obtain sufficient funds appear to be based on uncertainty and speculation. He may receive a lump sum from the sale of a property, but the property is not yet sold, and his share is uncertain. He has no legal right to a share, as the house belongs to his mother. He has applied for adult disability payment but has not received a decision. He hopes to find work but has only been drug free for a couple of months and has a criminal record which has made this difficult. He talked about taking in a lodger or joint tenant but has not considered this course of action in the 6 or 7 years since the joint tenant moved out and he can only do this if the Applicant agrees.

(h) Although eviction and a possible move to temporary accommodation is likely have a detrimental effect on the Respondent's health and addiction issues, he did not provide any medical evidence to support this concern. Furthermore, his abstinence from drugs has been for a relatively short period. There is no guarantee that it can be sustained, in the absence of assistance from trained professionals, even if he is able to remain at the property.

53. The Tribunal also had regard to the following factors in the Respondent's favour;-

(a) The Applicant is part of the Wheatley Group which owns and manages over 93,000 homes across Scotland and receives public finding.

(b) The Applicant allowed the Respondent to accrue substantial arrears before commencing proceedings.

(c) While most of the rent is being paid, the impact on the Applicant of the tenancy continuing is unlikely to be substantial. However, the effect on the Respondent of eviction is likely to be significant, particularly as he is keen to remain in an area where he has a support network, and it may be difficult to sustain his sobriety in temporary accommodation provided by the Local Authority.

54. The Legal Member is satisfied that the factors outlined in paragraph 52 (particularly (e), (f), (g) and (h)) outweigh the fact that there has been a recent improvement in payments to the rent account and the other factors referred to in paragraph 53. The evidence does not support a conclusion that the Respondent can maintain payments which will ensure that his current rent charge is met and that the arrears will reduce, even gradually. Had the Tribunal determined that the application was competent, they would have been satisfied that it was reasonable to grant an order for eviction.

Decision

55. The Tribunal determines that an order for possession should not be granted against the Respondent.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Josephine Bonnar

Josephine Bonnar, Legal Member **21 August 2024**